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FISCAL IMPACT STATEMENT

LS 6802

BILL NUMBER: HB 1118

NOTE PREPARED: Jan 29, 2008

BILL AMENDED: Jan 24, 2008

SUBJECT: Alcoholic Beverages.

FIRST AUTHOR: Rep. Van Haaften

FIRST SPONSOR:

BILL STATUS: As Passed House

FUNDS AFFECTED: X GENERAL
X DEDICATED
FEDERAL

IMPACT: State & Local

Summary of Legislation: *Grocery Store Definition:* This bill defines "grocery store" for purposes of the law concerning alcohol and tobacco. The bill allows the Alcohol and Tobacco Commission (ATC) to renew or transfer ownership of a beer dealer's permit for a beer dealer who: (1) held a permit before July 1, 2008; and (2) has retail property that does not qualify for a permit as a grocery store. The bill also provides that for an establishment to receive a permit as a grocery store, the establishment's sale of alcohol must represent 25% or less of the annual gross sales of all items sold on the premises excluding gasoline and oil products. This bill requires a grocery store that holds a permit to report annually to the ATC the amount of the permit holder's establishment's annual gross sales of food.

ATC Inspections: The bill requires the ATC to: (1) conduct random unannounced inspections of locations where alcoholic beverages are sold or distributed; and (2) provide notice of a pending investigation at least 15 days before the investigation. (Current law requires 30 days.) The bill also allows a person at least 18 years of age and less than 21 years of age to receive or purchase alcoholic beverages as part of an enforcement action.

(Amended) *Liquor and Beer Dealer Quotas:* This bill changes the quota provision for liquor dealers and beer dealers. The bill also provides that after July 1, 2008, the ATC may issue not more than five one, two, or 3-way permits to restaurants in economic development areas in most cities and towns. The bill provides for auctioning of the permits and for renewals. The bill also provides that if the 2010 decennial census authorizes additional permits, the three-way permits issued under this subsection must be subtracted from any additional three-way permits.

Alcohol & Tobacco Sales to Minors: This bill provides for graduated civil penalties against a permittee for

repeat violations of furnishing alcohol to a minor on the licensed premises and for the collected penalties to be deposited in the enforcement and administration fund. The bill also provides that civil penalties for violations of tobacco laws concerning sales to minors are the same as penalties for selling alcohol to minors. This bill increases the penalty for furnishing an alcoholic beverage to a minor to: (1) a Class B misdemeanor for the first offense; (2) a Class A misdemeanor for a subsequent offense; and (3) a Class D felony if the illegal furnishing of the alcoholic beverage results in serious bodily injury to or the death of any person. The bill also provides that a violation occurs if a person recklessly, knowingly, or intentionally furnishes an alcoholic beverage to a minor. (Current law provides that a violation occurs if a person recklessly furnishes an alcoholic beverage to a minor.) The bill makes conforming changes.

Local Alcoholic Beverage Boards: This bill requires a member of a local alcoholic beverage board (local board) to complete a training program to educate the member on alcoholic beverage law and the operation of the local board and the ATC. The bill requires a local board member to be removed if the member does not complete the training within six months after the member is appointed. This bill provides that members appointed before January 1, 2009, have until July 1, 2009, to receive training. The bill also requires a local board to allow all individuals attending a public local board meeting or hearing to make oral comments at the meeting or hearing regarding the subject of the meeting or hearing. The bill allows a local board to give greater weight to oral comments provided by a person who owns or operates a business, owns real property, or resides within 1,000 feet of the requested location of an alcoholic beverage permit. The bill also allows a local board to appoint at least one attorney to assist the local board in fulfilling its duties. This bill requires the ATC to give notice: (1) by mail to the local board if an objection has been filed and of the date of any appeal hearing set by the ATC; and (2) by publication of the date of any appeal hearing set by the ATC. The bill requires the ATC to notify the local board, upon request, as to whether the grocery store meets the local board's established amount.

Alcohol Display Requirements: This bill requires a liquor dealer (other than a package liquor store) to display liquor in a clearly separated area that prohibits the presence of a minor unless the minor is accompanied by a parent or guardian.

Notice of Permit Transfers: The bill changes the notice requirements for new permits and permit transfers.

Brewer and Wholesaler Sales to Consumers: The bill allows a small brewery to sell and deliver beer to a consumer. This bill removes a provision that allows a large brewery to sell and deliver beer to a consumer. The bill prohibits a beer wholesaler from selling beer to a consumer other than an employee. This bill allows liquor retailers and liquor dealers to provide six ounce samples of flavored malt beverages and hard cider. The bill also allows a liquor wholesaler to sell liquor in an amount not to exceed 18 liters to an employee of the liquor wholesaler.

Estate Sale Purchases: The bill establishes requirements for a wine wholesaler to resell wine purchased at an estate sale. This bill provides a wholesaler with immunity from product liability for wine that was purchased at an estate sale. The bill makes it a Class D felony for a wholesaler to sell an unauthorized brand of alcoholic beverages and allows an injured permittee to bring a civil action against the wholesaler.

Coercion of Permittees: This bill prohibits a permittee from knowingly or intentionally coercing another permittee to enter into an agreement or take an action that violates the alcoholic beverage statutes and rules. (Current law prohibits only a primary source of supply or a beer wholesaler from coercing a beer wholesaler.)

Warehouse Transfers: The bill provides that if a beer wholesaler's warehouse is transferred, the warehouse

does not have to be transferred to a location within an incorporated area.

Small Brewery Tourist Signage: This bill requires criteria, established jointly by the Indiana Department of Transportation and the Office of Tourism Development, for tourist attraction signage to include a category for a tourist attraction that is a small brewery.

Sales Clerks: The bill also requires alcoholic beverage sales in a drug store or grocery store to be rung up by a sales clerk who: (1) has an employee permit; (2) has alcohol server training; and (3) is at least 19 years of age. This bill prohibits a proprietor of a package liquor store, drug store, or grocery store from allowing any person who is not a sales clerk from ringing up an alcoholic beverage sale.

New Year's Eve Sales Allowed: The bill allows the sale of alcoholic beverages on New Year's day for off premises consumption

Airline Employees and Alcohol Sales: The bill also provides that an airline employee does not have to obtain an employee permit to sell alcoholic beverages.

Live Music Concerts and Entrance with Alcohol: This bill allows an outdoor place of public entertainment used primarily in connection with live music concerts to allow a person to enter its establishment with alcoholic beverages and consume the alcoholic beverages on the premises. The bill removes the limits on the number of guests and duration of an event where an excursion and adjacent landsite permit holder provides alcoholic beverages to guests without charge.

Tobacco Certificate Enforcement: The bill also provides that the ATC has certain powers regarding enforcement of the tobacco laws.

Political Party of Enforcement Officers: This bill removes a provision that enforcement officers of the ATC must be employed so that not more than ½ are members of the same political party.

ATC Trainer and Alcohol Server Training Programs: The bill allows the ATC to approve trainer programs (to educate individuals on training alcohol servers) by third parties that meet certain requirements.

Employee Permits: The bill also changes: (1) the term of an employee's permit from two to three years; and (2) the fee to correspond with the term change.

Effective Date: July 1, 2008.

Explanation of State Expenditures: This bill will increase administrative costs for the Alcohol and Tobacco Commission. The ATC will have to amend rules, forms, permit, and enforcement procedures to implement the provisions of this bill. The amount of increase in administrative costs is indeterminable.

The funds and resources required for the ATC could be supplied through a variety of sources, including the following: (1) existing staff and resources not currently being used to capacity; (2) existing staff and resources currently being used in another program; (3) authorized, but vacant, staff positions, including those positions that would need to be reclassified; (4) funds that, otherwise, would be reverted; or (5) new appropriations. Ultimately, the source of funds and resources required to satisfy the requirements of this bill will depend upon legislative and administrative actions. The ATC reverted \$145,032 in FY 2007, and according to the January 2, 2008, *State Vacant Positions Report*, the ATC had two vacant positions worth

approximately \$92,000.

Background and Details: Grocery Store Definition: This bill also requires the ATC, upon application for a new permit or transfer of a location of an existing permit, to investigate the desirability of the permit in regard to the potential geographical location of the permit. The bill provides that the ATC may consider the following in conducting this investigation:

- (1) The need for the services at the requested location of the permit.
- (2) The desire of the neighborhood or the community to receive the services.
- (3) The impact of the services on other business in the neighborhood or community.
- (4) The impact of the services on the neighborhood or community.

The impact of these provisions on the administrative expenditures of the ATC is indeterminable and will ultimately depend upon administrative decisions of the ATC in choosing the extent of the required investigations. The impact of this provision will also depend upon the cost of the current investigation procedures of the ATC. The language of this provision mirrors language contained in the ATC's administrative rules at 905 IAC 1-27-4.

Liquor and Beer Dealer Quotas: The bill changes the quota provision for liquor dealers and beer dealers. To the extent that liquor and beer dealer permit applications increase there will be an increase in administrative costs to the ATC. It is estimated that any increase due to these changes will be offset by the increase in permit fee revenue realized by granting more liquor and beer dealer permits.

Local Alcoholic Beverage Boards: The bill requires local alcoholic beverage board members to complete a training program conducted by the ATC. The increase in costs to the ATC for training approximately 368 local board members (four per county) is indeterminable and will ultimately depend upon the administrative decisions of the ATC in implementing the program.

The bill imposes other administrative requirements on local boards, as well as allowing local boards to hire at least one attorney as an advisor. Currently, the ATC pays all administrative costs incurred by the local boards. Therefore, any increase in the administrative costs to the local boards is an increase in costs to the ATC.

ATC Trainer and Alcohol Server Training Programs: The bill allows the ATC to implement alcohol server trainer training programs. To the extent that the ATC is able to train more individuals that can train alcohol servers, there could be an offsetting administrative cost savings. Any savings will ultimately depend upon the number of individuals that receive the trainer certification and the administrative decisions of the ATC in contracting with these individuals to provide server training.

Live Music Concerts and Entrance with Alcohol: This bill would allow people to bring alcoholic beverages into, and consume those beverages at, Conner Prairie's Symphony on the Prairie series at the location commonly referred to as the "symphony bowl." Under current law, it is unlawful for a person who owns or operates a restaurant or place of public entertainment to allow people to enter the establishment with alcoholic beverages for consumption in the establishment. The statute (IC 7.1-5-8-4) states that this prohibition does not apply to the following:

- (1) A private room hired by a guest of a bona fide club or hotel that holds a retail permit.
- (2) A facility that is used in connection with the operation of a paved track that is used primarily for the sport of auto racing.

This bill adds the following type of establishment to this list:

- (3) An outdoor place of public entertainment that is:
 - (A) between 4 and 6 acres;
 - (B) within a mile of the White River;
 - (C) owned and operated by a 501(c)(3) nonprofit corporation; and
 - (D) used primarily in connection with live music concerts.

The only place currently known to fit this description is the symphony bowl at Conner Prairie.

Alcohol & Tobacco Sales to Minors: Under current law, a person recklessly selling, bartering, exchanging, providing, or furnishing an alcoholic beverage to a minor commits a Class C misdemeanor. Under the bill, the offense would become a Class B misdemeanor, and knowingly or intentionally would be added to the condition of the offense. In addition two new criminal penalties would be added under this section: a Class A misdemeanor for a subsequent offense; and a Class D felony if the offense results in serious bodily injury or death.

State expenditures could increase if an offender is incarcerated in a state prison rather than in a local jail. A Class D felony is punishable by a prison term ranging between six months to three years or reduction to Class A misdemeanor. The period of incarceration will depend upon mitigating and aggravating circumstances. The average expenditure to house an adult offender was \$19,185 and \$63,138 for a juvenile in FY 2007. (This does not include the cost of new construction.) If offenders can be housed in existing facilities with no additional staff, the marginal cost for medical care, food, and clothing is approximately \$1,825 annually, or \$5 daily, per prisoner. The average length of stay in Department of Correction (DOC) facilities for all Class D felony offenders is approximately ten months.

Tobacco Certificate Enforcement: This bill sets forth many new requirements, procedures, and enforcement powers for the ATC to regulate tobacco certificates within the state. These provisions will cause an indeterminable increase in administrative costs to the ATC. This increase in cost could be offset by the collection of civil penalties allowed to be imposed for violations of these new provisions. The amount of the penalty is up to \$1,000 per violation, and the penalties would be deposited in the state General Fund as miscellaneous collections are required to be deposited under IC 7.1-4-7-3.

Explanation of State Revenues: (Revised) *Liquor and Beer Dealer Quotas:* The provisions of this bill allowing permits to be issued outside the quota restrictions to cities and towns with economic development areas could increase state revenues significantly. The bill provides that these permits shall be auctioned off by the ATC, and the minimum bid is \$75,000 for each permit. The amount of the increase is indeterminable and will depend upon the number of permits issued to cities and towns that have established or do establish economic development areas (EDA's) under IC 36-7-14. To qualify the city or town must also determine that the EDA is:

- (1) in an area needing retail redevelopment;
- (2) in the process of being redeveloped or renovated to include restaurant areas; or
- (3) in an area being funded in part with grants or investments by a unit of government.

The bill exempts certain cities from this provision for additional permits. The only city known to meet the exemption standards is Mishawaka. The bill provides that after July 1, 2008, the ATC may issue not more than five one, two, or 3-way permits to restaurants in EDA's. The bill also provides that these permits may not be issued to a tavern (as defined in the bill). The bill further provides that if the 2010 decennial census

authorizes additional permits, the three-way permits issued under this subsection must be subtracted from any additional three-way permits. Revenue from these permits is distributed 37% to the state General Fund; 33% to the general funds of cities, towns, and counties based on population; and 30% to the Enforcement and Administration Fund.

The bill also changes the quota provision for liquor dealers and beer dealers. To the extent that liquor and beer dealer permit applications increase, there could be an increase in permit fee revenues. The fee for these permits is \$500.

Definition of Grocery Store: The bill defines "grocery store" to mean a store or part of a store that meets the following requirements:

- (1) A store generally known as a:
 - (A) supermarket, grocery store, or delicatessen, and primarily engaged in selling a general food line which may include canned or frozen food, fresh fruit and vegetables, and fresh and prepared meats, fish, and poultry.
 - (2) convenience store or food mart but not a gas station.
 - (3) warehouse club, superstore, supercenter, or general merchandise store that primarily sells a general line of groceries or gourmet foods in combination with merchandise which may include apparel, furniture, and appliances.
 - (4) specialty or gourmet food store that primarily sells miscellaneous specialty food not for immediate consumption and not made on the premises not including meat, fish, seafood, fruits, vegetables, confections, nuts, popcorn, and baked goods.
- (2) The establishment must meet the requirements, if any, established by the applicable local board for annual gross sales of good for human consumption that is exempt from the state Sales Tax.

This definition's impact on dealer permit fee revenue is indeterminable. The impact on fee revenue will ultimately depend on the administrative actions of the ATC, and the number of permits issued to dealers that previously may not have qualified as a grocery store. According to the ATC there are approximately 1,330 grocery store beer dealer permits issued under IC 7.1-3-5-2. The bill gives the ATC the option of renewing or transferring ownership of a beer dealer's permit for a grocery store held by a permittee who falls outside this new definition of grocery store in the bill and is a proprietor of a drug store, grocery store, or a package liquor store. Therefore, the total number of permits issued may not decrease.

Alcohol Displays: The bill requires a liquor dealer (other than a package liquor store) to display liquor in a clearly separated area that prohibits the presence of a minor unless the minor is accompanied by a parent or guardian. This provision of the bill will only have a fiscal impact to the extent that alcohol sales are affected by the display requirements set forth in the bill (also see *Background on Alcohol Sales* below). The impact of this bill on state revenues is indeterminable. This bill could decrease dealer permit fee revenue, as well as Sales Tax and Alcoholic Beverage Tax collections.

Alcohol & Tobacco Sales to Minors: The bill establishes civil penalties for an alcohol permit holder, the holder's agent, or the holder's employee that furnishes alcohol to a minor. Any civil penalties collected would increase revenue to the Enforcement and Administration Fund. The bill provides that any fines collected under this provision shall be deposited in the EAF.

The bill also provides that civil penalties for violations of tobacco laws concerning sales to minors are the same as penalties for selling alcohol to minors. This increase in civil penalties will result in an increase in revenue to the Richard D. Doyle Youth Tobacco Education and Enforcement Fund. The amount of any

increase is indeterminable.

The bill changes the existing penalty for alcohol sales to minors from a Class C to a Class B misdemeanor. This bill also adds penalties for repeat offenses of sales of alcohol to minors. This could cause more revenue to the Common School Fund to be collected if a larger criminal fine is assessed by the sentencing court. The maximum fine for a Class C misdemeanor is \$500, while the maximum fine for a Class B misdemeanor is \$1,000, for a Class A misdemeanor is \$5,000, and a Class D felony is \$10,000.

Court fees for both misdemeanors and felonies are \$120.

Sales Clerks: The bill requires alcoholic beverage sales in a drug store or grocery store to be rung up by a sales clerk who: (1) has an employee permit; (2) has alcohol server training; and (3) is at least 19 years of age. The bill prohibits a proprietor of a package liquor store, drug store, or grocery store from allowing any person who is not a sales clerk from ringing up an alcoholic beverage sale. This provision of the bill will increase employee permit fee revenue to the Excise Police Retirement Fund and the ATC's Enforcement and Administration Fund. The increase in fee revenue is expected to be over \$175,000 in FY 2009, and \$175,000 every three years thereafter. This estimate is based on the assumption that all dealer permit holders will have at least two sales clerks that obtain an employee permit at each establishment. This estimate was also offset by the fact that under current law, package liquor store sales clerks are already required to obtain employee permits. The ATC estimates that there are approximately 1,930 dealer permit holders that are not package liquor stores.

Employee Permits: The bill changes: (1) the term of an employee's permit from two to three years; and (2) the fee to correspond with the term change. The fee in the bill goes from \$30 to \$45. The cost per year for this permit does not change. There will be an impact from this provision in two ways. The first is that revenue will be shifted from FY 2009 forward, but this shift is expected to be offset by the applications by sales clerks who would be required to apply for permits in FY 2009. Therefore, there is expected to be an overall positive fiscal impact from this provision in conjunction with the bill's requirement that sales clerks apply for employee permits in order to ring up beverages at certain establishments.

Tobacco Certificate Enforcement: This bill sets forth many new requirements, procedures, and enforcement powers for the ATC to regulate tobacco certificates within the state. If there are violations of these provisions then there could be an increase in revenue to the state General Fund from collection of civil penalties allowed to be imposed under the bill. The amount of the penalty is up to \$1,000 per violation, and any collections would be deposited in the state General Fund as miscellaneous collections are required to be deposited under IC 7.1-4-7-3.

Background on Alcohol Sales: To the extent that any of the provisions of this bill affect alcoholic beverage sales, state revenues will be impacted. Sales changes will affect collections of both alcoholic beverage excise taxes and the Sales Tax.

The alcoholic beverage excise taxes are distributed in varying amounts to the following funds: state General Fund, the Post War Construction Fund, the ATC Enforcement and Administration Fund, the Addiction Services Fund, and the Wine Grape Market Development Fund. The state retains 50% of the General Fund distribution of beer and wine excise tax revenue. The remainder is distributed to cities and towns based on population.

Sales Tax revenue is deposited in the Property Tax Replacement Fund (50%), the state General Fund (49.067%), the Public Mass Transportation Fund (0.76%), the Commuter Rail Service Fund (0.14%), and the Industrial Rail Service Fund (0.033%).

Explanation of Local Expenditures: *Alcohol Sales to Minors:* The bill changes the existing penalty for alcohol sales to minors from a Class C to a Class B misdemeanor. This bill also adds penalties for repeat offenses of sales of alcohol to minors. Costs to local governments could increase because the maximum term of imprisonment for a Class C misdemeanor is up to 60 days in jail, while the maximum term for a Class B misdemeanor is up to 180 days, and the maximum term for a Class A misdemeanor is up to one year. The average daily cost of housing a prisoner is approximately \$44. However, if an offender is sentenced to state prison rather than to a county jail, the costs to the county may be reduced.

Explanation of Local Revenues: Any increase in alcoholic beverage excise taxes, dealer permit fee revenue, or retailer permit fee revenue would increase revenue distributed to local governments as required by the distribution formulas for these revenue sources.

Liquor and Beer Dealer Quotas: For an explanation of the increased permit fee revenues that will be distributed to cities and towns please refer to the *Explanation of State Revenues* section above.

Alcohol Sales to Minors: Court fees would remain unchanged. Court fees are \$120 for both misdemeanor and felony offenses.

State Agencies Affected: Alcohol and Tobacco Commission.

Local Agencies Affected: Trial courts; local law enforcement agencies; local alcoholic beverage boards.

Information Sources: Vicki Stephens, Controller, ATC, 317-232-2436; Indiana Sheriffs' Association; Indiana Association of Cities and towns.

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